

Message

From: Dan Jackson [REDACTED]@google.com]
Sent: 1/9/2020 11:58:31 PM
To: Colin Smith [REDACTED]@google.com]
CC: Hiroshi Lockheimer [REDACTED]@google.com]; Kent Walker [REDACTED]@google.com]; Sameer Samat [REDACTED]@google.com]; Donald Harrison [REDACTED]@google.com]; Ruth Porat [REDACTED]@google.com]; Lily Lin [REDACTED]@google.com]; Corey duBrowa [REDACTED]@google.com]
Subject: Re: FYI: Epic / Google Play

Privileged and confidential

Update: Epic appealed their most recent enforcement and submitted a new version of the app. However, the latest version still has not fixed the violation of our Payments Policy (i.e. it has not incorporated Play Billing) and they have shown no willingness to do so. As a result, we are sending them a notice this afternoon informing them we are rejecting their appeal. Our email also includes context about all past violations in order to dissuade them from making it public. We have reactive comms prepared if needed, but press largely have framed their reporting weeks ago as if we have already officially rejected the app, so this step is unlikely to result in a news cycle on its own.

On Fri, Dec 13, 2019 at 2:00 PM Colin Smith [REDACTED]@google.com> wrote:
 PRIVILEGED

Agree it's overly ominous sounding in this case and we avoid that phrase in our reactive statement.

The comms to the developer details the specific policy violations and includes links to both the malicious behavior and payments policies.

Colin Smith
 Google Communications and Public Affairs
 [REDACTED]
 [REDACTED]@google.com

On Fri, Dec 13, 2019 at 1:34 PM Hiroshi Lockheimer [REDACTED]@google.com> wrote:
 PRIVILEGED

BTW I know "malicious behavior" is the technical term for it, but it sure helps make the headlines click-baity and also probably raises the blood pressure over at Epic. Can we try to soften the language in the future?

On Fri, Dec 13, 2019, 12:23 PM Colin Smith [REDACTED]@google.com> wrote:
 *** Attorney client privileged ***

Update: This morning we notified Epic that its app submission was rejected due to violating both our Malicious Behavior and Google Play Billing Policy. We've seen some new inbound from media so we expect to see some additional coverage today and possibly over the weekend.

Will update this thread with any significant coverage or changes.

Colin Smith
 Google Communications and Public Affairs
 [REDACTED]

EXHIBIT 8613

██████████@google.com

On Thu, Dec 12, 2019 at 2:52 PM Colin Smith ██████████@google.com> wrote:

*** Attorney client privileged ***

Coverage: Here is the WSJ piece (also pasted below). Not much new content other than it touches the regulatory scrutiny of app stores have been under (Google and Apple) and includes quotes from Tim Sweeney's interview with the publication.

App: Looks like Epic posted several updates to the Play store and the team is now in reviews. Early analysis looks like the new app is the game and does not use Play billing, a violation of our billing policy. We'll make a comms recommendation on developer communication (time and content) once the Play team's analysis is final. More to come.

'Fortnite' Developer Challenges Google Over App-Store Fees

Epic pushes popular videogame with payment system that would cut out Google

The creator of "Fortnite" is challenging Google's policy of taking a cut of payments made for app-related purchases at a time when regulators have started scrutinizing those kind of arrangements between tech companies and their vendors.

Epic Games Inc. is asking Google to release in its app store a version of Fortnite with a built-in payment system that allows the developer to keep all in-game revenue. Google, a unit of Alphabet Inc., GOOG 0.39% currently takes a 30% cut for the kind of in-game purchases players make on games downloaded via its app store.

Epic's move effectively puts Google in the uncomfortable position of having to either approve the game and forgo a lucrative revenue stream or potentially provide antitrust regulators with evidence it may be unduly pressuring smaller companies.

"We believe this form of tying of a mandatory payment service with a 30% fee is illegal in the case of a distribution platform with over 50% market share," Epic Chief Executive Tim Sweeney said in a statement. "Epic doesn't seek a special exception for ourselves; rather we expect to see a general change to smartphone industry practices in this regard."

"Fortnite" is free to play and sells virtual currency for real money that users can spend on in-game perks such as avatar costumes and dance moves.

The shooter game has been accessible on mobile devices running Google's Android operating system since last year, though only by downloading it from Epic's website. Now the game maker wants to distribute the free game also via Google's app store, called Google Play, which could help broaden its reach. That is where Google then takes a 30% cut on sales.

"Google Play has a business model and billing policy that allow us to invest in our platform and tools to help developers build successful businesses while keeping users safe," Google said in a statement. It said it expected companies that want to distribute their apps through its channel to "participate under the same terms as other developers," adding they can also distribute their game to Android users without going through Google's channel.

Google and Apple Inc., which also charges app developers to distribute their software, account for the overwhelming majority of sales generated from download fees and in-app purchases. Legislators are investigating whether the companies are stifling competition and making it too challenging for developers to profit off their apps.

Other companies have fought back or sought ways around Google and Apple's app-store fees. In March Spotify Technology SA filed an antitrust complaint against Apple in Europe, in which the streaming-music company accused Apple of abusing its app store to limit competition against its own Apple Music. Spotify claimed that Apple makes it difficult for rival subscription services to market themselves to users without using Apple's payment system.

Apple defended its practice of taking a 30% cut of sales through its App Store in response to Spotify's criticism. It has said it is entitled to take a share of app sales because it built the store and employs staff who review thousands of apps for compliance with rules around privacy and content.

The tension came as U.S. regulators have been stepping up their investigations of whether some of the biggest tech companies are abusing their market position.

Google's app store policy also is under scrutiny overseas. Disconnect Inc., another app developer, this year complained to European regulators that Google was abusing its market position. Google has called the complaint "baseless."

"Fortnite" also is available on Apple devices. Apple, which only allows distribution through its App Store, gets a 30% cut from Epic.

Apple has generated \$15.3 billion in app store revenue this year, while Google has collected \$8.3 billion, according to estimates from app-analytics firm Sensor Tower Inc.

Mr. Sweeney, in a June interview with the Journal, said that even through the revenue-sharing arrangement still leaves Epic with a decent profit margin, Google and Apple, with their 30% take, are "making more profit than most developers themselves make."

"Fortnite" has been one of the most popular games on the videogame market in the past two years. Epic, in March, said the game had 250 million players. Nielsen's SuperData in June said the game generated \$3.9 billion in estimated lifetime revenue. "Fortnite" launched in mid-2017.

Epic formally submitted "Fortnite" to Google for release this week. Apps from developers that are new to Google Play, such as Epic, typically must wait up to seven days to get a signoff from Google.

Epic has sparred with Google before. When "Fortnite" came to Android devices last year, Google researchers found a security hole in the app developers software that left users' phones vulnerable to hackers. Google publicly disclosed the flaw even though Epic asked it to wait until the software had been patched.

Last year, Epic set up a rival game-download store. It collects just 12% of sales from developers, who also have the option of using their own payment system.

On Thu, Dec 12, 2019 at 10:49 AM Colin Smith [REDACTED]@google.com> wrote:

Update: We learned this morning from a source at WSJ that Epic has submitted numerous updates to its Play app. We flagged this for the Play team and they identified three updates. We're going to hold on the rejection notice planned for 11:00am Pacific until the team has reviewed these new submissions.

Colin Smith
Google Communications and Public Affairs
[REDACTED]
[REDACTED]@google.com

On Wed, Dec 11, 2019 at 6:08 PM Colin Smith [REDACTED]@google.com> wrote:
Here is the latest as of this evening.

Update: We believe Epic plans to announce a Fortnite/Star Wars marketing event in partnership with Disney tomorrow during the Game Awards. They may use our conflict to drive more attention but with the current tone of coverage, we believe that won't land well for them.

Coverage: Coverage has dropped off today with only a few pieces on small game sites.

App: The app Epic submitted to the Play store was not a version of Fortnite, it was an installer that would direct users to an Epic site to download the actual game. This technique would allow them to get around the security issues of sideloading but violates Play policy since apps aren't allowed to load executable files because those files wouldn't go through our Play security screening. Since the app submitted to Play did not contain any billing capability (the one downloaded from the Epic site did though), it did not violate our billing policy. Current plan is to notify Epic that its app has been rejected for a violation of our Malicious Behavior policy on Thursday morning at 11:00am PST. We have reactive comms ready.

Blog(s): Epic still has not posted anything public beyond their response to the 9to5Google piece but we have a draft of our blog ready to update when/if they do.

Next steps: We continue to monitor coverage and social media. It's possible they do something tomorrow morning ahead of the Game Awards but our 11:00am notification will mean they can't use the rejection as part of an early news cycle or full page ad.

Colin Smith
Google Communications and Public Affairs
[REDACTED]
[REDACTED]@google.com

On Tue, Dec 10, 2019 at 11:36 AM Colin Smith [REDACTED]@google.com> wrote:
*** Attorney client privileged ***

Wanted to give this thread the latest updates.

Coverage: We're continuing to engage with press and coverage remains aligned with our messages. The majority of reader comments also support Google and see this as another stunt by the game developer. We're expecting a few more pieces today. Already beginning to feel like an old news cycle which was the primary goal of our strategy.

App: Epic has submitted an app for Play review. The team is reviewing it and has currently found that it violates policy by downloading executable files from outside Play. They are still reviewing the billing

details (if the payments happen without or outside of the app). We will coordinate with Play operations, policy and legal on the rejection notice.

Blog: Epic still has not posted anything public beyond their response to the 9to5Google piece. We have a draft of our blog ready to flesh out once they go public with the specifics of its complaint (expecting a blog or full-page ad) against Google and possibility Apple.

Next steps: We continue to monitor coverage and social closely. We're working with legal on any possible response to Tim's follow-up note. And we've reached out to App Store contacts at Apple PR to see if they are getting inbound from Epic.

Colin Smith
Google Communications and Public Affairs

[REDACTED]
[REDACTED]@google.com

On Mon, Dec 9, 2019 at 4:01 PM Colin Smith [REDACTED]@google.com> wrote:

*** Attorney client privileged ***

We've updated the blog post, cleaning up language, focusing the key arguments and addressing his criticisms. We'll still need to adjust once we see what Epic does but think we're in a good place right now.

On the coverage front, we continue to see positive press pick up with the Verge and Android Police now on the story.

Colin Smith
Google Communications and Public Affairs

[REDACTED]
[REDACTED]@google.com

On Mon, Dec 9, 2019 at 12:10 PM Colin Smith [REDACTED]@google.com> wrote:

*** Attorney client privileged ***

+Dan Jackson for Play comms

Thanks Corey. Currently the news cycle has quieted down. We're continuing to engage with a few more folks to make sure they're aware of the details and have our statement (CNET, TechCrunch, Verge, and analyst firm Creative Strategies).

We're also continuing to hone our blog but don't think we should post anything until they submit an app or make a public complaint. And at this point the general narrative in coverage and comments is that this is a greedy move by Epic.

Colin Smith
Google Communications and Public Affairs

[REDACTED]

██████████@google.com

On Mon, Dec 9, 2019 at 11:21 AM Corey duBrowa ██████████@google.com> wrote:
Privileged

Colin will update on next steps comms wise but a few pieces have landed that are helpful and have caused a bit of swirl at Epic:

<https://9to5google.com/2019/12/08/fortnite-android-google-play-store/>

<https://www.androidauthority.com/epic-fortnite-google-play-1064156/>

Fortnite responded with an email to execs and now has a comment (a bit rambling). Looking at their claims and our blog. But they have not submitted anything to the store at this point. Think we caught them off guard and they are revisiting their plans

On Mon, Dec 9, 2019 at 11:06 AM Kent Walker ██████████@google.com> wrote:
Privileged

Feedback from leads was that we should find a way to get across (probably from third parties) that Epic is not criticizing Apple -- likely not because of differential level of service but because they're afraid of retaliation by Apple (which has more market power ability to promote or not promote apps, etc.)

On Sun, Dec 8, 2019 at 12:09 PM Sameer Samat ██████████@google.com> wrote:
+Donald Harrison (who we've been working with closely on all this)

Hi all -- thanks very much for the feedback on this very difficult situation.

Correy: Hiroshi, Jamie and I are on the same flight to Tokyo right now with incredibly bad United Wifi. Given how fast this is all moving do you think you could work with Colin/PR team to turn another version of the blog post with the feedback incorporated? We land in 9 hours and can connect with you to review the final if that makes sense ?

On more point where I'd like your thoughts: The plan, as I understand it, is to post our reactive statement when Epic goes public. Then see what precisely they are saying, update the blog post to respond to their specific points, and then make a decision as to whether the coverage is picking up enough where we need to use the blog response. Under what conditions do you think we should respond with the blog post? I am biased to get our fully message out there and not let Epic tell the entire story -- but it is tricky given our response may increase coverage. Let us know your thoughts.

sameer

On Sun, Dec 8, 2019 at 11:17 AM Kent Walker ██████████@google.com> wrote:
Privileged

+ Sameer

On #3, I was actually the one who suggested removing it, because apparently Epic argues that Apple's App Store works better for them and other developers than our Play Store does, and I wasn't sure that we wanted to open up that issue. But if others feel we should, either directly or through third parties, I don't feel strongly about it

On Sun, Dec 8, 2019, 2:04 PM Corey duBrowa [REDACTED]@google.com> wrote:
+ Colin and Lily (who is traveling to Asia, so more of an FYI for her). -- this is really thoughtful feedback.
point 1 makes sense to me; we will look at doing that.
we can also solve for point 2.
Hiroshi will have to speak to point 3 as I am not close enough to the discussion.

On Sun, Dec 8, 2019 at 10:56 AM Ruth Porat [REDACTED]@google.com> wrote:
thanks for this. couple of questions (or comments as someone reading it more like a person on the street :)
1. when we describe the payment as part of our business model it seems to talk more about us than the value we are delivering to developers and users around reach, security, etc. You get to the 'what do we deliver' points too far down in the blogpost -- even a couple of sentences upfront about value we deliver -- less about the fact that this is our biz model. i don't care about the fact that this is our biz model because we are being accused of having a bad biz model.
2. it doesn't make clear that we invested billions of dollars in order to create this platform. sounds self serving and self referential -- we developed the model so we get the money? even when we say we developed tools, it does not make clear that we spent billions of dollars and continue to spend a bucketload of \$ so of course we need to find ways to continue to invest to protect users and developers.
3. seems to me that it is very relevant that they pay apple for the benefit of their store -- why the decision to delete that reference from our comms?

[REDACTED]

On Sun, Dec 8, 2019 at 9:34 AM Hiroshi Lockheimer [REDACTED]@google.com> wrote:
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Hi folks, just a heads up that we are expecting a significant amount of press in the Android developer community around Epic / Fortnite. More details below but the tl;dr is Epic wants to publish on Play, but not pay us revshare (they are currently published on Android outside of Play, where revshare is not required). In our opinion their (hypocritical, because they pay Apple revshare) argument gets to the core of our openness and business model, so we plan to defend vigorously.

We are also in touch with Corey's team about possibly issuing broad internal comms so that Googlers understand the nuances.

Hiroshi

----- Forwarded message -----

From: Sameer Samat [REDACTED]@google.com>

Date: Sat, Dec 7, 2019 at 8:20 PM

Subject: FYI: Epic / Google Play

To: Hiroshi Lockheimer [REDACTED]@google.com>, Kent Walker [REDACTED]@google.com>,
Donald Harrison [REDACTED]@google.com>

Cc: Jamie Rosenberg [REDACTED]@google.com>, Tristan Ostrowski [REDACTED]@google.com>,
Colin Smith [REDACTED]@google.com>, Lydia Ash [REDACTED]@google.com>, Purnima Kochikar
[REDACTED]@google.com>, Tian Lim [REDACTED]@google.com>

*** Attorney client privileged ***

*** seeks advice of counsel ***

Hiroshi, Kent, and Don,

We wanted to give you a heads up that we received a carefully worded letter from Epic that says they intend to publish a version of Fortnite to the Google Play store this coming week that bypasses Google Play Billing.

They explained that they do not believe developers should need to use billing services provided by stores nor pay the 30% fees on consumer spending. We are quite confident they plan a media blitz early this week (could start tomorrow, or monday). (Note: For over a year they have listed Fornite in Apple's App Store, use their billing, and pay them 30% -- but there current rhetoric and protest seems targeted only at Android)

We wanted to make you aware that:

- The temperature between Google / Epic is likely going to rise in a very public way
- We have a reactive statement ready and are preparing a full rebuttal of their points in a blog post that we will have ready in case the situation heats up and calls for it.
- Through Don's team we are coordinating across Cloud (Sunil), YT (Robert), Stadia (Phil) and of course with Kent's policy, competition, and legal teams
- We are also in touch with internal comms to do the right things to communicate about all of this with Googlers at the right time.

Please let us know if you'd like to discuss / have questions or concerns.

Sameer

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- Dan Jackson
- Global Communications
[REDACTED]@google.com